

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE.**

WRIT PETITION NO. 4716

OF 2004 .

H.D. Baldawa.

... Petitioner.

V/s.

Appellate Tribunal

... Respondent.

Shri G.R. Rege with S.A. Mudbidri and S.W.
Kulkarni for the applicant.

Shri Rajiv Chavan with U.S. Bhate for the
respondent.

CORAM : V.C.DAGA AND J.P. DEVADHAR, JJ.

DATED : 18th August 2005.

P.C. :

. Rule returnable forthwith. Heard finally
by consent of the parties.

2. This petition is directed against the order
of the Customs, Excise and Service Tax Appellate
Tribunal, WZB, Mumbai, dated 25.2.2004, whereby
application for condonation of delay, seeking
condonation of 57 days delay came to be rejected,
only on the ground that the applicant was not
hospitalised, when he claimed that he was ill when
he had been to Jaipur.

3. It is needless to mention that for
considering sufficient cause, whether or not he was
hospitalised could not have been the only ground of

consideration. The consideration ought to have been whether or not he was ill and that illness has prevented the petitioner from filing appeal.

4. Having heard the parties and looking to the material available on record in the backdrop of consensus between the parties, we are prima facie of the view that sufficient cause has been made out by the petitioner for condonation of delay in filing appeal though little more details would have been highly appreciated.

5. In the facts and circumstances of the case, delay is condoned subject to payment of costs in the sum of Rs. 5,000/- (five thousand only) to be deposited with the Tribunal within two weeks from the date of receipt of copy of this order by the Tribunal, for being paid to the Revenue. On deposit of the amount of costs, the appeal shall stand restored to file of the Tribunal and the Tribunal shall be free to hear the appeal in accordance with law treating the appeal within time.

6. Rule is thus made absolute in terms of this order with no order as to costs.

(J.P. DEVADHAR,J.)

(V.C. DAGA,J.)